



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/36104/2014**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 17 February 2016

Promulgated

On 29 February 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

And

Appellant

D S

(ANONYMITY HAS BEEN DIRECTED)

Respondent

Representation:

For the Appellant: Ms Savage Home Office Presenting Officer

For the Respondent: No Representative

DETERMINATION AND REASONS

1. The Appellant in these proceedings is The Secretary of State for the Home Department, but for convenience I shall now refer to the parties as they were before the First Tier Tribunal.
2. The Appellant is a citizen of Lithuania born on 2 February 1973. He appealed against the decision of the respondent dated 2 August 2014 refusing him admission to the United Kingdom under the Immigration

(European Economic Area) Regulations 2006, for public policy reasons. His appeal was heard by Judge of the First Tier Tribunal Chohan on 14 July 2015. The appeal was allowed and a decision promulgated on 29 July 2015.

3. An application for permission to appeal was lodged and permission was refused by Judge of the First Tier Tribunal Froom on 6 November 2015. An application for permission to appeal to the Upper Tribunal was lodged and permission was granted by Upper Tribunal Judge McGeachy on 25 November 2015. The grounds of appeal assert that the Judge of the First Tier Tribunal erred by applying a completely wrong legal framework when considering the appeal. This was not an appeal against deportation. No decision to deport has been made in respect of the Appellant but it was on this basis that the First-tier Tribunal judge made his decision.
4. The Appellant did not appear at this error of law Hearing either in person or by representative.
5. The Presenting Officer made her submissions, submitting that the First Tier Judge misdirected himself as this is not a deportation case but a claim against refusal of entry of the Appellant into the United Kingdom, under the Immigration (European Economic Area) Regulations 2006.
6. She submitted that at paragraphs 1, 11, 15, 17 and 19 of the decision the Judge refers to a deportation order. There is no deportation order. She submitted that this must be a material error of law. She submitted that there has been a lack of proper scrutiny by the First Tier Judge.
7. The Presenting Officer then submitted that at paragraph 14 of the decision the First Tier Judge accepts that the Appellant has been exercising Treaty rights in the United Kingdom having already acknowledged that there is no evidence of this. She submitted that this undermines the whole decision.
8. I was asked to set aside the First Tier Tribunal decision and remit the appeal back to the First Tier.

DECISION

9. It is clear that the decision by the First Tier Judge was made on the wrong legal framework. This is not a deportation case and yet deportation has been mentioned at five paragraphs of the decision. This appeal is against the refusal of the admission to the United Kingdom of the Appellant, under European Community Law.
10. The correct parts of EEA Regulations are Regulation 21(5) and (6), Exclusion & Removal. Although the Judge dealt with Regulation 21, his reference throughout to deportation is a material error. In addition, without any evidence to support this, he accepted that the Appellant had been exercising his Treaty Rights in the United Kingdom. This is also a material error.

Notice of Decision

11. There are material errors of law in the First Tier Tribunal`s decision promulgated on 29 July 2015. It must be set aside.
12. No findings of the First Tier Tribunal can stand. Under Section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First Tier Tribunal. The member(s) of the First Tier Tribunal chosen to reconsider the case are not to include Judge Chohan.
13. Anonymity has been directed.

Signed

Date

Deputy Upper Tribunal Judge I A M Murray
Judge of the Upper Tribunal